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## *Rules, Regulations, Orders*

### TITLE 16—COMMERCIAL PRACTICES

### CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 3835]

IN THE MATTER OF INDUSTRIAL PLANTS CORPORATION

§ 3.6 (m10) *Advertising falsely or misleadingly—Manufacture or preparation:* § 3.6 (n) (2) *Advertising falsely or misleadingly—Nature—Product.* Representing, directly or indirectly, in connection with offer, etc., in commerce, of respondent's products, that pliers or any other tools which are not plated with the metal nickel are nickel plated, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Sup. IV, sec. 45b) [Cease and desist order, Industrial Plants Corporation, Docket 3835, July 30, 1940]

ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 30th day of July, A. D. 1940.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint except those allegations contained therein referring to wrenches which are denied, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of the Federal Trade Commission Act;

*It is ordered,* That the respondent, Industrial Plants Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that pliers or any other tools which are not plated with the metal nickel are nickel plated.

*It is further ordered,* That the respondent shall, within sixty days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-3291; Filed, August 8, 1940; 11:20 a. m.]

[Docket No. 3736]

IN THE MATTER OF LUXOR, LTD.

§ 3.45 (c) (3) *Discriminating in price—Direct discrimination—Services or facilities.* Furnishing, in connection with sale and distribution of toilet articles and cosmetics in commerce among the several states and in the District of Columbia, any such commodity packaged in containers of a certain size and style unless all purchasers competing in the resale of such commodities are accorded the facility of packaging in containers of like size and style, on proportionally equal terms, prohibited. (Sec. 2 (e), 49 Stat. 1527; 15 U.S.C., Supp. IV, sec. 13 (e)) [Cease and desist order; Luxor, Ltd., Docket 3736, July 31, 1940]

ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of July, A. D. 1940.

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence, taken before Webster Ballinger, an Examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed in support of said complaint and in opposition thereto, and the respondent

[1] 4 F.R. 1237.

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FEDERAL REGISTER

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having waived oral argument, and the Commission having made its findings as to the facts and its conclusion with respect to the violation of the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U.S.C. Title 15, Sec. 13) and for other purposes":

*It is ordered*, That the respondent Luxor, Ltd., and its officers, representatives, agents and employees, in connection with the sale and distribution of toilet articles and cosmetics in commerce among the several states and in the District of Columbia, cease and desist from furnishing any such commodity packaged in containers of a certain size and style unless all purchasers competing in the resale of such commodities are accorded the facility of packaging in containers of like size and style, on proportionally equal terms.

*It is further ordered*, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-3290; Filed, August 8, 1940; 11:20 a. m.]

## TITLE 26—INTERNAL REVENUE

## CHAPTER I—BUREAU OF INTERNAL REVENUE

[T.D. 5000]

## PART 26—EXCESS PROFITS ON CONTRACTS FOR NAVAL VESSELS AND ARMY AND NAVY AIRCRAFT

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§ 26.0 *Introductory.* (a) Section 2 (b) of the Act entitled "An Act To expedite national defense, and for other purposes," approved June 28, 1940 (Public, No. 671, 76th Cong., 3rd Sess.), reads as follows:

(b) After the date of approval of this Act no contract shall be made for the construction or manufacture of any complete naval vessel or any Army or Navy aircraft, or any portion thereof, under the provisions of this section or otherwise, unless the contractor agrees, for the purposes of section 3 of the Act of March 27, 1934 (48 Stat. 505; 34 U.S.C. 496), as amended—

(1) to pay into the Treasury profit in excess of 8 per centum (in lieu of the 10 per centum and 12 per centum specified in such section 3) of the total contract prices of such contracts within the scope of this subsection as are completed by the particular contracting party within the income taxable year;

(2) that any profit in excess of 8.7 per centum of the cost of performing such contracts except prime contracts made on a cost-plus-a-fixed-fee basis as are completed by the contracting party within the income taxable year shall be considered to be profit in excess of 8 per centum of the total contract prices of such contracts; and

(3) that he will make no subcontract which is within the scope of such section 3, unless the subcontractor agrees to the foregoing conditions.

(b) Section 14 of the Act entitled "An Act To provide more effectively for the national defense by carrying out the recommendations of the President in his message of January 12, 1939, to the Congress," approved April 3, 1939, 53 Stat. 560 (10 U.S.C., Sup., 311), reads in part as follows:

SEC. 14. All the provisions of section 3 of the Act of March 27, 1934, as amended (48 Stat. 505; 49 Stat. 1926), and as amended by this section shall be applicable with respect to contracts for aircraft or any portion thereof for the Army to the same extent and in the same manner that such provisions are applicable with respect to contracts for aircraft, or any portion thereof for the Navy: *Provided*, That the Secretary of War shall exercise all functions under such section with respect to aircraft for the Army which are exercised by the Secretary of the Navy with respect to aircraft for the Navy * * *.

(c) Section 3 of the Act entitled "An Act To establish the composition of the United States Navy with respect to the categories of vessels limited by the treaties signed at Washington, February 6, 1922, and at London, April 22, 1930, at the limits prescribed by those treaties; to authorize the construction of certain naval vessels; and for other purposes," approved March 27, 1934, 48 Stat. 505 (34 U.S.C. 496), as amended by the Act of June 25, 1936, 49 Stat. 1926 (34 U.S.C., Sup., 496) and as further amended by section 14 of the Act of April 3, 1939, 53 Stat. 560 (34 U.S.C., Sup., 496), reads as follows:

SEC. 3. The Secretary of the Navy is hereby directed to submit annually to the Bureau of the Budget estimates for the construction of the foregoing vessels and aircraft; and there is hereby authorized to be appropriated such sums as may be necessary to carry into effect the provisions of this Act: *Provided*, That no contract shall be made by the Secretary of the Navy for the construction and/or manufacture of any complete naval vessel or aircraft, or any portion thereof, herein, heretofore, or hereafter authorized unless the contractor agrees—

(a) To make a report, as hereinafter described, under oath, to the Secretary of the Navy upon the completion of the contract.

(b) To pay into the Treasury profit, as hereinafter provided shall be determined by the Treasury Department, in excess of 10 per centum of the total contract prices for the construction and or manufacture of any complete naval vessel or portion thereof, and in excess of 12 per centum of the total contract prices for the construction and or manufacture of any complete aircraft or portion thereof, of such contracts within the scope of this section as are completed by the particular contracting party within the income taxable year, such amount to become the property of the United States, but the surety under such contracts shall not be liable for the payment of such excess profit: *Provided*, That if there is a net loss on all such contracts or subcontracts for the construction and or manufacture of any complete naval vessel or portion thereof completed by the particular contractor or subcontractor within any income taxable year, such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding

income taxable year, and that if there is a net loss, or a net profit less than 12 per centum, as aforesaid on all such contracts or subcontracts for the construction and or manufacture of any complete aircraft or portion thereof completed by the particular contractor or subcontractor within any income taxable year, such net loss or deficiency in profit shall be allowed as a credit in determining the excess profit, if any, during the next succeeding four income taxable years, and that the method of ascertaining the amount of excess profit, initially fixed upon shall be determined on or before June 30, 1939: *Provided further*, That if such amount is not voluntarily paid the Secretary of the Treasury shall collect the same under the usual methods employed under the internal-revenue laws to collect Federal income taxes: *Provided further*, That all provisions of law (including penalties) applicable with respect to the taxes imposed by Title I of the Revenue Act of 1934, and not inconsistent with this section, shall be applicable with respect to the assessment, collection, or payment of excess profits to the Treasury as provided by this section, and to refunds by the Treasury of overpayments of excess profits into the Treasury: *And provided further*, That this section shall not apply to contracts or subcontracts for scientific equipment used for communication, target detection, navigation, and fire control as may be so designated by the Secretary of the Navy, and the Secretary of the Navy shall report annually to the Congress the names of such contractors and subcontractors affected by this provision, together with the applicable contracts and the amounts thereof: *And provided further*, That the income-taxable years shall be such taxable years beginning after December 31, 1935, except that the above provisos relating to the assessment, collection, payment, or refunding of excess profit to or by the Treasury shall be retroactive to March 27, 1934.

(c) To make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this Act, but any subdivision of any contract or subcontract involving an amount in excess of $10,000 shall be subject to the conditions herein prescribed.

(d) That the manufacturing spaces and books of its own plant, affiliates, and subdivisions shall at all times be subject to inspection and audit by any person designated by the Secretary of the Navy, the Secretary of the Treasury, and/or by a duly authorized Committee of Congress.

(e) To make no subcontract unless the subcontractor agrees to the foregoing conditions.

The report shall be in form prescribed by the Secretary of the Navy and shall state the total contract price, the cost of performing the contract, the net income, and the per centum such net income bears to the contract price. A copy of such report shall be transmitted to the Secretary of the Treasury for consideration in connection with the Federal income tax returns of the contractor for the taxable year or years concerned.

The method of ascertaining the amount of excess profit to be paid into the Treasury shall be determined by the Secretary of the Treasury in agreement with the Secretary of the Navy and made available to the public. The method initially fixed upon shall be so determined on or before June 30, 1934: *Provided*, That in any case where an excess profit may be found to be owing to the United States in consequence hereof, the Secretary of the Treasury shall allow credit for any Federal income taxes paid or remaining to be paid upon the amount of such excess profit.

The contract or subcontracts referred to herein are limited to those where the award exceeds $10,000.

(d) Sections 3, 4, and 12 of the Act of June 28, 1940, approved June 28, 1940 (Public, No. 671, 76th Cong., 3rd Sess.), read, respectively, as follows:

SEC. 3. The provisions of section 3 of the Act of March 27, 1934 (48 Stat. 505), as amended by the Acts of June 25, 1936 (49 Stat. 1926), and April 3, 1939 (53 Stat. 560; U.S.C., Supp. V, title 34, sec. 496), and as made applicable to contracts for aircraft or any portion thereof for the Army by such Act of April 3, 1939, shall, in the case of contracts or subcontracts entered into after the date of approval of this Act and during the period of the national emergency declared by the President on September 8, 1939, to exist, be limited to contracts or subcontracts where the award exceeds $25,000.

SEC. 4. In the case of every contract or subcontract for the construction or manufacture of any complete naval vessel or Army or Navy aircraft or any portion thereof which is entered into (whether before or after the date of approval of this Act), the Secretary of War or the Secretary of the Navy, as the case may be, after agreement with the contractor or subcontractor, shall certify to the Commissioner of Internal Revenue as to (a) the necessity and cost of special additional equipment and facilities acquired to facilitate, during the national emergency declared by the President on September 8, 1939, to exist, the completion of such naval vessel or Army or Navy aircraft or portion thereof in private plants; and (b) the percentage of cost of such special additional equipment and facilities to be charged against such contract or subcontract. For all purposes of section 3 of the Act of March 27, 1934 (48 Stat. 505; 34 U.S.C. 496), as amended, such certification shall be subject to such regulations as the President may prescribe, but shall be binding upon the Commissioner of Internal Revenue, unless, within five days after receipt of such certification, he make formal objection thereto to the Secretary of the Navy or the Secretary of War as the case may be. The part of such cost chargeable against the contract or subcontract in pursuance of such certification, shall, for the purposes of such section 3, be considered to be a reduction of the contract price of the contract or subcontract. The amount charged against the contract or subcontract in pursuance of such certification shall, for the purposes of such section 3, be applied against and reduce the cost or other basis of such special additional equipment and facilities as of the date of installation thereof: *Provided*, That the Secretary of War or the Secretary of the Navy, as the case may be, shall report to the Congress, every three months, the cost of such special additional equipment and facilities to be borne by the Government under each contract.

SEC. 12. The provisions of all preceding sections of this Act shall terminate June 30, 1942, unless the Congress shall otherwise provide.

Pursuant to the authority prescribed by section 2 (b) of the Act of June 28, 1940 (Public, No. 671, 76th Cong., 3rd Sess.), section 14 of the Act of April 3, 1939, and section 3 of the Act of March 27, 1934, as amended, the following regulations are hereby prescribed:*

§ 26.1 *Definitions.* As used in these regulations the term—

(a) *"Act"* means the Act of June 28, 1940 (Public, No. 671, 76th Cong., 3rd Sess.).

(b) *"Act of March 27, 1934, as amended"* means section 3 of the Act of March 27, 1934, 48 Stat. 505 (34 U.S.C. 496), as amended by the Act of June 25, 1936, 49 Stat. 1926 (34 U.S.C., Sup., 496), and as further amended and made applicable to contracts and subcontracts for Army aircraft by the Act of April 3, 1939, 53 Stat. 560 (34 U.S.C., Sup., 496).

(c) *"Secretary of the Department concerned"* means the Secretary of War or the Secretary of the Navy as the case may be.

(d) *"Person"* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation or venture is carried on.

(e) *"Contract"* means an agreement made by authority of the Secretary of the Department concerned for the construction or manufacture of any complete naval vessel or Army or Navy aircraft, or any portion thereof, entered into after the date of enactment of the Act (June 28, 1940) and before July 1, 1942.

(f) *"Contractor"* means a person entering into a direct contract with the Secretary of the Department concerned or his duly authorized representative.

(g) *"Subcontract"* means an agreement entered into by one person with another person for the construction or manufacture of any complete naval vessel or Army or Navy aircraft, or any portion thereof, the prime contract for such vessel or aircraft or portion thereof having been entered into between a contractor and the Secretary of the Department concerned or his duly authorized representative after the date of enactment of the Act (June 28, 1940) and before July 1, 1942. The term "subcontract" does not include such an agreement even though entered into after June 28, 1940, if the prime contract with respect thereto was entered into on or before June 28, 1940, but does include such an agreement entered into after June 30, 1942, if the prime contract with respect thereto was entered into on or before June 30, 1942.

(h) *"Subcontractor"* means any person other than a contractor entering into a subcontract.

(i) *"Contracting party"* means a contractor or subcontractor as the case may be.

(j) *"Contract price"* or *"total contract price"* means the amount or total amount to be received under a contract or subcontract as the case may be.

(k) *"Income-taxable year"* means the calendar year, the fiscal year ending during such calendar year, or the fractional part of such calendar or fiscal year upon the basis of which the contracting party's net income is computed and for

*§§ 26.0 to 26.20, inclusive, issued under the authority contained in sections 2 (b), 3, and 4 of the Act of June 28, 1940 (Public, No. 671, 76th Cong., 3rd Sess.), section 14 of the Act of April 3, 1939, 53 Stat. 560 (10 U.S.C., Sup., 311; 34 U.S.C., Sup., 496), and section 3 of the Act of March 27, 1934, 48 Stat. 505 (34 U.S.C. 496), as amended by the Act of June 25, 1936, 49 Stat. 1926 (34 U.S.C., Sup., 496) and as further amended and made applicable to contracts and subcontractss for Army aircraft by section 14 of such Act of April 3, 1939.

which its income tax returns are made for Federal income tax purposes.*

§ 26.2 *Scope of regulations.* These regulations deal with liability for excess profit on (1) contracts for the construction or manufacture of any complete naval vessel or Army or Navy aircraft, or any portion thereof, entered into after the date of enactment of the Act (June 28, 1940) and before July 1, 1942, and (2) subcontracts made with respect to any such contract. As to contracts for naval vessels and aircraft, entered into on or before June 28, 1940, and subcontracts made with respect to any such contract, see Treasury Decision 4906[1] (§§ 17.0 to 17.19, inclusive, Title 26, Code of Federal Regulations, 1939 Sup.). As to contracts for Army aircraft entered into on or before June 28, 1940, and subcontracts made with respect to any such contract, see Treasury Decision 4909[2] (§§ 16.0 to 16.18, inclusive, Title 26, Code of Federal Regulations, 1939 Sup.). As to the date of completion of a contract or subcontract within the scope of these regulations, see § 26.5 of these regulations.*

§ 26.3 *Contracts and subcontracts under which excess profit liability may be incurred.* Except as otherwise provided with respect to contracts or subcontracts for certain scientific equipment (see § 26.4 of these regulations), every contract entered into after June 28, 1940, and before July 1, 1942, is subject to the provisions of the Act relating to excess profit liability if—

(1) it is entered into prior to the termination of the period of national emergency declared by the President, on September 8, 1939, to exist (see Proclamation No. 2352),[3] and is awarded for an amount exceeding $25,000; or

(2) it is entered into after the termination of such period of national emergency and is awarded for an amount in excess of $10,000.

Every subcontract made pursuant to such a contract is subject to the provisions of the Act relating to excess profit liability if—

(a) it involves an amount in excess of $25,000 and was entered into prior to the termination of such period of national emergency and before July 1, 1942; or

(b) it involves an amount in excess of $10,000 and was entered into after the termination of such period of national emergency or after June 30, 1942, whichever is the earlier.

If a contracting party places orders with another party, aggregating an amount in excess of $25,000 (or $10,000 as the case may be), for articles or materials which are destined to become a component part of a complete naval vessel or Army or Navy aircraft, or any portion thereof, the placing of such orders shall constitute a subcontract within the scope of the Act, unless it is clearly shown that each of the orders involving $25,000 (or $10,000 as the case may be) or less is a bona fide separate and distinct subcontract for articles or materials which are not destined to become and do not become a component part of any such vessel or aircraft, or any portion thereof, constructed or manufactured under one particular contract or subcontract by the contracting party placing the orders, and is not a subdivision made for the purpose of evading the provisions of the Act.*

§ 26.4 *Contracts or subcontracts for scientific equipment.* No excess profit liability is incurred upon a contract or subcontract if at the time or prior to the time such contract or subcontract is made it is designated by the Secretary of the Department concerned as being exempt under the provisions of the Act of March 27, 1934, as amended, pertaining to scientific equipment used for communication, target detection, navigation, and fire control.*

§ 26.5. *Completion of contract defined.* The date of delivery of the vessel, aircraft, or portion thereof, covered by the contract or subcontract shall be considered the date of completion of the contract or subcontract unless otherwise determined jointly by the Secretary of the Department concerned and the Secretary of the Treasury or their duly authorized representatives. In case a contract is for two or more vessels or aircraft, if it appears that the contract constitutes a single undertaking as to such vessels or aircraft and if the work of constructing or manufacturing such vessels or aircraft is prosecuted as a single undertaking, then the date of delivery of the vessel or aircraft last delivered under such contract shall be considered the date of completion of the contract. Except as otherwise provided in the first sentence of this section, the replacement of defective parts of delivered articles or the performance of other guarantee work in respect of such articles will not operate to extend the date of completion. As to the treatment of the cost of such work as a cost of performing a contract or subcontract, see § 26.9 (h) of these regulations. As to a refund in case of adjustment due to any subsequently incurred additional costs, see § 26.19 of these regulations. If a contract or subcontract is at any time canceled or terminated, it is completed at the time of the cancelation or termination.*

§ 26.6. *Manner of determining liability. The first step* in the determination of the excess profit to be paid to the United States by a contracting party with respect to contracts and subcontracts completed within an income-taxable year is to ascertain the total contract prices of all contracts and subcontracts completed by the contracting party within the income-taxable year. As to total contract prices, see § 26.8 of these regulations.

*The second step* is to ascertain the cost of performing such contracts and subcontracts and to deduct such cost from the total contract prices of such contracts and subcontracts as computed in the first step. See § 26.9 of these regulations.

The amount remaining after such subtraction is the amount of net profit or net loss upon the contracts and subcontracts completed within the income-taxable year.

*The third step*, in case there is a net profit upon such contracts and subcontracts, is to subtract from the amount of such net profit as computed in the second step the sum of—

(1) Whichever is the lesser of the following: (A) An amount equal to 8 percent of the total contract prices of the contracts (including prime contracts made on a cost-plus-a-fixed-fee basis) and subcontracts completed within the income-taxable year, or (B) an amount equal to 8.7 percent of the total cost of performing such contracts (except prime contracts made on a cost-plus-a-fixed-fee basis) and subcontracts plus 8 percent of the total contract prices of prime contracts made on a cost-plus-a-fixed-fee basis;

(2) The amount of any net loss sustained in a prior income-taxable year and allowable as a credit in determining the excess profit for the income-taxable year (see § 26.10 of these regulations); and

(3) The amount of any deficiency in profit sustained in a prior income-taxable year (on a contract or subcontract for Army or Navy aircraft or any portion thereof) and allowable as a credit in determining the excess profit for the income-taxable year (see § 26.10 of these regulations).

The amount remaining after such subtraction is the amount of excess profit for the income-taxable year.

*The fourth step* is to ascertain the amount of credit allowed for Federal income taxes paid or remaining to be paid upon the amount of such excess profit (see § 26.11 of these regulations) and then subtract from the amount of such excess profit the amount of credit for Federal income taxes.

The amount remaining after this subtraction is the amount of excess profit to be paid to the United States by the contracting party for the income-taxable year.*

§ 26.7 *Computation of excess profit liability.* The application of the provisions of § 26.6 of these regulations may be illustrated by the following examples:

*Example (1).* On February 1, 1941, the B Corporation which keeps its books and makes its Federal income tax returns on a calendar year basis entered into a contract coming within the scope of the Act, the total contract price of which was $200,000. On March 1, 1941, the corporation entered into another such contract, the total contract price of which was $40,000. Both contracts (neither of which was made on a cost-plus-a-fixed-fee basis) were completed

[1] 4 F.R. 2492.
[2] 4 F.R. 2733.
[3] 4 F.R. 3851.

within the calendar year 1941, the first at a cost of $155,000 and the second at a cost of $45,000. During the year 1940 the B Corporation sustained an allowable net loss of $2,500 and an allowable deficiency in profit of $1,000 on contracts and subcontracts coming within the scope of the Act and completed within the income-taxable year 1940. For purposes of the Federal income tax, the net income of the B Corporation for the year 1941 amounted to $96,000, which included the total net profit of $40,000 upon the two contracts. For the purposes of this example, it is assumed that for the year 1941 the B Corporation paid a Federal income tax of $20,500 upon its entire net income. The excess profit liability is $14,600 computed as follows:

| | | |
|---|---|---|
| Total contract prices: | | |
| Contract No. 1 | $200,000 | |
| Contract No. 2 | 40,000 | |
| | | $240,000 |
| Less: Cost of performing contracts: | | |
| Contract No. 1 | $155,000 | |
| Contract No. 2 | 45,000 | |
| | | 200,000 |
| Net profit on contracts | | 40,000 |
| Less: | | |
| (1) 8.7 percent of cost of performing contracts (8.7 percent of $200,000 = $17,400), which amount is less than 8 percent of total contract prices (8 percent of $240,000 = $19,200) | $17,400 | |
| (2) Net loss from 1940 | 2,500 | |
| (3) Deficiency in profit from 1940 | 1,000 | |
| | | 20,900 |
| Excess profit for year 1941 | | 19,100 |
| Less: Credit for Federal income taxes (assumed Federal income tax on $19,100 at the rates for 1941) | | 4,500 |
| Amount of excess profit payable to the United States | | 14,600 |

*Example* (2). On February 1, 1941, the B Corporation which keeps its books and makes its Federal income tax returns on a calendar year basis entered into a contract coming within the scope of the Act, the total contract price of which was $200,000. On March 1, 1941, the corporation entered into another such contract on a cost-plus-a-fixed-fee basis, the estimated cost being $100,000 and the stipulated fee being $7,000. Both contracts were completed within the calendar year 1941, the first at a cost of $155,000 and the second at a cost of $90,000. During the year 1940 the B Corporation sustained an allowable net loss of $2,500 and an allowable deficiency in profit of $1,000 on contracts and subcontracts coming within the scope of the Act. For purposes of the Federal income tax, the net income of the B Corporation for the year 1941 amounted to $96,000, which included the total net profit of $52,000 on the two contracts. For the purposes of this example, it is assumed that for the year 1941 the B Corporation paid a Federal income tax of $20,500 upon its entire net income. The excess profit liability is $21,255, computed as follows:

| | | |
|---|---|---|
| Total contract prices: | | |
| Contract No. 1 | $200,000 | |
| Contract No. 2 ($90,000 cost plus $7,000 fee) | 97,000 | |
| | | $297,000 |
| Less: Cost of performing contracts: | | |
| Contract No. 1 | $155,000 | |
| Contract No. 2 | 90,000 | |
| | | 245,000 |
| Net profit on contracts | | 52,000 |
| Less: | | |
| (1) 8.7 percent of cost of performing contract No. 1 plus 8 percent of total contract price of contract No. 2 (8.7 percent of $155,000 plus 8 percent of $97,000=$21,245), which amount is less than 8 percent of total contract prices (8 percent of $297,000=$23,760) | $21,245 | |
| (2) Net loss from 1940 | 2,500 | |
| (3) Deficiency in profit from 1940 | 1,000 | |
| | | 24,745 |
| Excess profit for year 1941 | | 27,255 |
| Less: Credit for Federal income taxes (assumed Federal income tax on $27,255 at the rates for 1941) | | 6,000 |
| Amount of excess profit payable to the United States | | 21,255 |

*

§ 26.8. *Total contract price.* The total contract price of a particular contract or subcontract (see § 26.1 of these regulations) may be received in money or its equivalent. If something other than money is received, only the fair market value of the thing received, at the date of receipt, is to be included in determining the amount received. Bonuses earned for bettering performance and penalties incurred for failure to meet the contract guarantees are to be regarded as adjustments of the original contract price. Trade or other discounts granted by a contracting party in receipt of a contract or subcontract performed by such party are also to be deducted in determining the true total contract price of such contract or subcontract. In the case of a contract made on a cost-plus-a-fixed-fee basis the total contract price is the actual, rather than the estimated, cost of performing the contract plus the stipulated fee and any other amounts received by the contracting party for performing such contract.

For the purposes of the Act and these regulations, the contract price of a contract or subcontract shall be reduced by the part of the cost of special additional equipment and facilities acquired by the contracting party and chargeable against the contract or subcontract in pursuance of a certification made by the Secretary of the Department concerned in accordance with the provisions of section 4 of the Act. See Executive Order No. 8465 [4] and Joint Rules [5] issued under such order (I.R.B. 1940–30, 15).*

§ 26.9 *Cost of performing a contract or subcontract.*—(a) *General rule.*—The cost of performing a particular contract or subcontract shall be the sum of (1) the direct costs, including therein expenditures for materials, direct labor and direct expenses, incurred by the contracting party in performing the contract or subcontract; and (2) the proper proportion of any indirect costs (including therein a reasonable proportion of management expenses) incident to and necessary for the performance of the contract or subcontract.

(b) *Elements of cost.* No definitions of the elements of cost may be stated which are of invariable application to all contractors and subcontractors. In general, the elements of cost may be defined for purposes of the Act as follows:

(1) Manufacturing cost, which is the sum of factory cost (see paragraph (c) of this section) and other manufacturing cost (see paragraph (d) of this section);

(2) Miscellaneous direct expenses (see paragraph (e) of this section);

(3) General expenses, which are the sum of indirect engineering expenses, usually termed "engineering overhead" (see paragraph (f) of this section) and expenses of distribution, servicing and administration (see paragraph (g) of this section); and

(4) Guarantee expenses (see paragraph (h) of this section).

(c) *Factory cost.* Factory cost is the sum of the following:

(1) *Direct materials.* Materials, such as those purchased for stock and subsequently issued for contract operations and those acquired under subcontracts, which become a component part of the finished product or which are used directly in fabricating, converting or processing such materials or parts.

(2) *Direct productive labor.* Productive labor, usually termed "shop labor," which is performed on and is properly chargeable directly to the article manufactured or constructed pursuant to the contract or subcontract, but which ordinarily does not include direct engineering labor (see subparagraph (3) of this paragraph).

(3) *Direct engineering labor.* The compensation of professional engineers and other technicists (including reasonable advisory fees), and of draftsmen, properly chargeable directly to the cost of the contract or subcontract.

(4) *Miscellaneous direct factory charges.* Items which are properly chargeable directly to the factory cost of performing the contract or subcontract but which do not come within the classifications in subparagraphs (1), (2),

[4] 5 F.R. 2453.
[5] 5 F.R. 2590.

and (3) of this paragraph, as for example, royalties which the contracting party pays to another party and which are properly chargeable to the cost of performing the contract or subcontract (but see paragraph (d) of this section).

(5) *Indirect factory expenses.* Items, usually termed "factory overhead," which are not directly chargeable to the factory cost of performing the contract or subcontract but which are properly incident to and necessary for the performance of the contract or subcontract and consist of the following:

(i) *Labor.* Amounts expended for factory labor, such as supervision and inspection, clerical labor, timekeeping, packing and shipping, stores supply, services of tool crib attendants, and services in the factory employment bureau, which are not chargeable directly to productive labor of the contract or subcontract.

(ii) *Materials and supplies.* The cost of materials and supplies for general use in the factory in current operations, such as shop fuel, lubricants, heat-treating, plating, cleaning and anodizing supplies, nondurable tools and gauges, stationery (such as time tickets and other forms), and boxing and wrapping materials.

(iii) *Service expenses.* Factory expenses of a general nature, such as those for power, heat and light (whether purchased or produced), ventilation and air-conditioning and operation and maintenance of general plant assets and facilities.

(iv) *Fixed charges and obsolescence.* Recurring charges with respect to property used for manufacturing purposes of the contract or subcontract, such as premiums for fire and elevator insurance, property taxes, rentals and allowances for depreciation of such property, including maintenance and depreciation of reasonable standby equipment; and depreciation and obsolescence of special equipment and facilities necessarily acquired primarily for the performance of the contract or subcontract, except special additional equipment and facilities with respect to which the Secretary of the Department concerned has made a certification binding upon the Commissioner of Internal Revenue, pursuant to section 4 of the Act, in the case of such contract or subcontract. See Executive Order No. 8465 and Joint Rules issued under such Order (I.R.B. 1940–30, 15). In making allowances for depreciation, consideration shall be given to the number and length of shifts.

(v) *Miscellaneous indirect factory expenses.* Miscellaneous factory expenses not directly chargeable to the factory cost of performing the contract or subcontract, such as purchasing expenses; ordinary and necessary expenses of rearranging facilities within a department or plant; employees' welfare expenses; premiums or dues on compensation insurance; employers' payments to unemployment, old age and social security Federal and State funds not including payments deducted from or chargeable to employees or officers; pensions and retirement payments to factory employees; factory accident compensation (as to self-insurance, see paragraph (g) of this section); but not including any amounts which are not incident to services, operations, plant, equipment or facilities involved in the performance of the contract or subcontract.

(d) *Other manufacturing cost.* Other manufacturing cost as used in paragraph (b) of this section includes items of manufacturing costs which are not properly or satisfactorily chargeable to factory costs (see paragraph (c) of this section) but which upon a complete showing of all pertinent facts are properly to be included as a cost of performing the contract or subcontract, as for instance, payments of royalties and amortization of the cost of designs purchased and patent rights over their useful life; and "deferred" or "unliquidated" experimental and development charges. For example, in case experimental and development costs have been properly deferred or capitalized and are amortized in accordance with a reasonably consistent plan, a proper portion of the current charge, determined by a ratable allocation which is reasonable in consideration of the pertinent facts, may be treated as a cost of performing the contract or subcontract. In the case of general experimental and development expenses which may be charged off currently, a reasonable portion thereof may be allocated to the cost of performing the contract or subcontract. If a special experimental or development project is carried on in pursuance of a contract, or in anticipation of a contract which is later entered into, and the expense is not treated as a part of general experimental and development expenses or is not otherwise allowed as a cost of performing the contract, there clearly appearing no reasonable prospect of an additional contract for the type of article involved, the entire cost of such project may be allowed as a part of the cost of performing the contract.

(e) *Miscellaneous direct expenses.* Miscellaneous direct expenses as used in paragraph (b) of this section include—

(1) *Cost of installation and construction.* Cost of installation and construction includes the cost of materials, labor and expenses necessary for the erection and installation prior to the completion of the contract and after the delivery of the product or material manufactured or constructed pursuant to the contract or subcontract.

(2) *Sundry direct expenses.* Items of expense which are properly chargeable directly to the cost of performing a contract or subcontract and which do not constitute guarantee expenses (see paragraph (h) of this section) or direct costs classified as factory cost or other manufacturing cost (see paragraphs (c) and (d) of this section), such as premiums on performance or other bonds required under the contract or subcontract; State sales taxes imposed on the contracting party; freight on outgoing shipments; fees paid for wind tunnel and model basin tests; demonstration and test expenses; crash insurance premiums; traveling expenses. In order for any such item to be allowed as a charge directly to the cost of performing a contract or subcontract, (1) a detailed record shall be kept by the contracting party of all items of a similar character, and (2) no item of a similar character which is properly a direct charge to other work shall be allowed as a part of any indirect expenses in determining the proper proportion thereof chargeable to the cost of performing the contract or subcontract. As to allowable indirect expenses, see paragraphs (c) (5), (f), (g), and (j) of this section.

(f) *Indirect engineering expenses.* Indirect engineering expenses, usually termed "engineering overhead," which are treated in this section as a part of general expenses in determining the cost of performing a contract or subcontract (see paragraph (b) of this section), comprise the general engineering expenses which are incident to and necessary for the performance of the contract or subcontract, such as the following:

(1) *Labor.* Reasonable fees of engineers employed in a general consulting capacity, and compensation of employees for personal services to the engineering department, such as supervision, which is properly chargeable to the contract or subcontract, but which is not chargeable as direct engineering labor (see paragraph (c) (3) of this section).

(2) *Material.* Supplies for the engineering department, such as paper and ink for drafting and similar supplies.

(3) *Miscellaneous expenses.* Expenses of the engineering department, such as (A) maintenance and repair of engineering equipment, and (B) services purchased outside of the engineering department for blue printing, drawing, computing, and like purposes.

(g) *Expenses of distribution, servicing and administration.* Expenses of distribution, servicing and administration, which are treated in this section as a part of general expenses in determining the cost of performing a contract or subcontract (see paragraph (b) of this section), comprehend the expenses incident to and necessary for the performance of the contract or subcontract, which are incurred in connection with the distribution and general servicing of the contracting party's products and the general administration of the business, such as—

(1) *Compensation for personal services of employees.* The salaries of the corporate and general executive officers

and the salaries and wages of administrative clerical employees and of the office services employees such as telephone operators, janitors, cleaners, watchmen, and office equipment repairmen.

(2) *Bidding and general selling expenses.* Bidding and general selling expenses which by reference to all the pertinent facts and circumstances reasonably constitute a part of the cost of performing a contract or subcontract. The treatment of bidding and general selling expenses as a part of general expenses in accordance with this paragraph is in lieu of any direct charges which otherwise might be made for such expenses. The term "bidding expenses" as used in this section includes all expenses in connection with preparing and submitting bids.

(3) *General servicing expenses.* Expenses which by reference to all the pertinent facts and circumstances reasonably constitute a part of the cost of performing a contract or subcontract and which are incident to delivered or installed articles and are due to ordinary adjustments or minor defects; but including no items which are treated as a part of guarantee expenses (see paragraph (h) of this section) or as a part of direct costs, such as direct materials, direct labor, and other direct expense.

(4) *Other expenses.* Miscellaneous office and administrative expenses, such as stationery and office supplies; postage; repair and depreciation of office equipment; contributions to local charitable or community organizations to the extent constituting ordinary and necessary business expenses; employees' welfare expenses; premiums and dues on compensation insurance; employers' payments to unemployment, old age and social security Federal and State funds not including payments deducted from or chargeable to employees or officers; pensions and retirement payments to administrative office employees and accident compensation to office employees (as to self-insurance, see the following subparagraph).

Subject to the exception stated in this subparagraph, in cases where a contracting party assumes its own insurable risks (usually termed "self-insurance"), losses and payments will be allowed in the cost of performing a contract or subcontract only to the extent of the actual losses suffered or payments incurred during, and in the course of, the performance of the contract or subcontract and properly chargeable to such contract or subcontract. If, however, a contracting party assumes its own insurable risks (a) for compensation paid to employees for injuries received in the performance of their duties, or (b) for unemployment risks in States where insurance is required, there may be allowed as a part of the cost of performing a contract or subcontract a reasonable portion of the charges set up for purposes of self-insurance under a system of accounting regularly employed by the contracting party, as determined by the Commissioner of Internal Revenue, at rates not exceeding the lawful or approved rates of insurance companies for such insurance, reduced by amounts representing the acquisition cost in such companies, provided the contracting party adopts and consistently follows this method with respect to self-insurance in connection with all contracts and subcontracts subsequently performed by him.

Allowances for interest on invested capital are not allowable as costs of performing a contract or subcontract.

Among the items which shall not be included as a part of the cost of performing a contract or subcontract or considered in determining such cost, are the following: Entertainment expenses; dues and memberships other than of regular trade associations; donations except as otherwise provided above; losses on other contracts; profits or losses from sales or exchanges of capital assets; extraordinary expenses due to strikes or lockouts; fines and penalties; amortization of unrealized appreciation of values of assets; expenses, maintenance and depreciation of excess facilities (including idle land and building, idle parts of a building, and excess machinery and equipment) vacated or abandoned, or not adaptable for future use in performing contracts or subcontracts; increases in reserve accounts for contingencies, repairs, compensation insurance (except as above provided with respect to self-insurance) and guarantee work; Federal and State income and excess profits taxes and surtaxes; cash discount earned up to one percent of the amount of the purchase, except that all discounts on subcontracts subject to the Act will be considered; interest incurred or earned; bond discount or finance charges; premiums for life insurance on the lives of officers; legal and accounting fees in connection with reorganizations, security issues, capital stock issues and the prosecution of claims against the United States (including income tax matters); taxes and expenses on issues and transfers of capital stock; losses on investments; bad debts; and expenses of collection and exchange.

In order that the cost of performing a contract or subcontract may be accounted for clearly, the amount of any excess profits repayable to the United States pursuant to the Act should not be charged to or included in such cost.

(h) *Guarantee expenses.* Guarantee expenses include the various items of factory cost, other manufacturing cost, cost of installation and construction, indirect engineering expenses and other general expenses (see paragraphs (c) to (g), inclusive, of this section) which are incurred after delivery or installation of the article manufactured or constructed pursuant to the particular contract or subcontract and which are incident to the correction of defects or deficiencies which the contracting party is required to make under the guarantee provisions of the particular contract or subcontract. If the total amount of such guarantee expenses is not ascertainable at the time of filing the report required to be filed with the collector of internal revenue (see § 26.16 of these regulations) and the contracting party includes any estimated amount of such expenses as part of the claimed total cost of performing the contract or subcontract, such estimated amount shall be separately shown on the report and the reasons for claiming such estimated amount shall accompany the report; but only the amount of guarantee expenses actually incurred will be allowed. If the amount of guarantee expenses actually incurred is greater than the amount (if any) claimed on the report and the contracting party has made an overpayment of excess profit, a refund of the overpayment shall be made in accordance with the provisions of § 26.19 of these regulations. If the amount of guarantee expenses actually incurred is less than the amount claimed on the report and an additional amount of excess profit is determined to be due, the additional amount of excess profit shall be assessed and paid in accordance with the provisions of § 26.19 of these regulations.

(i) *Unreasonable compensation.* The salaries and compensation for services which are treated as a part of the cost of performing a contract or subcontract include reasonable payments for salaries, bonuses, or other compensation for services. As a general rule, bonuses paid to employees (and not to officers) in pursuance of a regularly established incentive bonus system may be allowed as a part of the cost of performing a contract or subcontract.

The test of allowability is whether the aggregate compensation paid to each individual is for services actually rendered incident to, and necessary for, the performance of the contract or subcontract, and is reasonable. Excessive or unreasonable payments whether in cash, stock or other property ostensibly as compensation for services shall not be included in the cost of performing a contract or subcontract.

(j) *Allocation of indirect costs.* No general rule applicable to all cases may be stated for ascertaining the proper proportion of the indirect costs to be allocated to the cost of performing a particular contract or subcontract. Such proper proportion depends upon all the facts and circumstances relating to the performance of the particular contract or subcontract. Subject to a requirement that all items which have no relation to the performance of the contract or subcontract shall be eliminated from the amount to be allocated, the following methods of allocation are outlined as acceptable in a majority of cases:

(1) *Factory indirect expenses.* The allowable indirect factory expenses (see

paragraph (c) (5) of this section) shall ordinarily be allocated or "distributed" to the cost of the contract or subcontract on the basis of the proportion which the direct productive labor (see paragraph (c) (2) of this section) attributable to the contract or subcontract bears to the total direct productive labor of the production department or particular section thereof during the period within which the contract or subcontract is performed, except that if the indirect factory expenses are incurred in different amounts and in different proportions by the various producing departments consideration shall be given to such circumstances to the extent necessary to make a fair and reasonable determination of the true profit and excess profit.

(2) *Engineering indirect expenses.* The allowable indirect engineering expenses (see paragraph (f) of this section) shall ordinarily be allocated or "distributed" to the cost of the contract or subcontract on the basis of the proportion which the direct engineering labor attributable to the contract or subcontract (see paragraph (c) (3) of this section) bears to the total direct engineering labor of the engineering department or particular section thereof during the period within which the contract or subcontract is performed. If the expenses of the engineering department are not sufficient in amount to require the maintenance of separate accounts, the engineering indirect costs may be included in the indirect factory expenses (see paragraph (c) (5) of this section) and allocated or distributed to the cost of performing the contract or subcontract as a part of such expenses, provided the proportion so allocated or distributed is proper under the facts and circumstances relating to the performance of the particular contract or subcontract.

(3) *Administrative expenses (or "overhead").* The allowable expenses of administration (see paragraph (g) of this section) or other general expenses except indirect engineering expenses, bidding and general selling expenses, and general servicing expenses shall ordinarily be allocated or distributed to the cost of performing a contract or subcontract on the basis of the proportion which the sum of the manufacturing cost (see paragraph (b) of this section) and the cost of installation and construction (see paragraph (e) of this section) attributable to the particular contract or subcontract bears to the sum of the total manufacturing cost and the total cost of installation and construction during the period within which the contract or subcontract is performed.

(4) *Bidding, general selling, and general servicing expenses.* The allowable bidding and general selling expenses and general servicing expenses (see paragraph (g) (2) and (3) of this section) shall ordinarily be allocated or distributed to the cost of performing a contract or subcontract on the basis of—

(i) The proportion which the contract price of the particular contract or subcontract bears to the total sales made (including contracts or subcontracts completed) during the period within which the particular contract or subcontract is performed, or

(ii) The proportion which the sum of the manufacturing cost (see paragraph (b) of this section) and the cost of installation and construction (see paragraph (e) of this section) attributable to the particular contract or subcontract bears to the sum of the total manufacturing cost and the total cost of installation and construction during the period within which the contract or subcontract is performed,

except that special consideration shall be given to the relation which certain classes of such expenses bear to the various classes of articles produced by the contracting party in each case in which such consideration is necessary in order to make a fair and reasonable determination of the true profit and excess profit. See § 26.14 of these regulations.*

§ 26.10 *Credit for net loss or for deficiency in profit in computing excess profit.* (a) The term "net loss," as applied to contracts and subcontracts coming within these regulations, means the amount by which the cost of performing any such contract or subcontract completed by a particular contracting party within the income-taxable year exceeds the total contract price of such contract or subcontract. As to the meaning of income-taxable year, see § 26.1 of these regulations.

(b) The term "deficiency in profit," as applied to contracts and subcontracts for the construction or manufacture of Army or Navy aircraft coming within these regulations, means the amount by which the allowable profit upon all such contracts and subcontracts completed by a particular contracting party within an income-taxable year exceeds the net profit upon all such contracts and subcontracts. For the purposes of this section, the term "allowable profit," means an amount equal to (1) 8 percent of the total contract prices of all contracts (including prime contracts made on a cost-plus-a-fixed-fee basis) and subcontracts completed within the income-taxable year, or (2) an amount equal to 8.7 percent of the total cost of performing such contracts (except prime contracts made on a cost-plus-a-fixed-fee basis) and subcontracts plus 8 percent of the total contract prices of prime contracts made on a cost-plus-a-fixed-fee basis, whichever of such amounts (1) or (2) is the lesser.

(c) A net loss or a deficiency in profit sustained by a contracting party with respect to contracts and subcontracts coming within these regulations and completed within an income-taxable year is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts coming within these regulations and completed within the first succeeding income-taxable year. The amount of such credit is the sum of the following: (1) The total net loss on contracts and subcontracts for the construction or manufacture of naval vessels completed within an income-taxable year reduced by the excess of the net profit over the allowable profit on contracts and subcontracts for the construction or manufacture of Army or Navy aircraft completed within such year, and (2) the total deficiency in profit and the total net loss on contracts and subcontracts for the construction or manufacture of Army or Navy aircraft completed within such year reduced by the excess of the net profit over the allowable profit on all contracts and subcontracts for the construction or manufacture of naval vessels completed within such year. Any portion of such credit which is attributable to contracts or subcontracts for the construction or manufacture of naval vessels shall be applied against the excess profit before the portion, if any, attributable to contracts or subcontracts for the construction or manufacture of Army or Navy aircraft is so applied. If, after the application of such credit, there is a remainder, the portion of the amount of such remainder which is attributable to contracts or subcontracts for the construction or manufacture of Army or Navy aircraft is allowable as a credit in computing the contracting party's excess profit on contracts or subcontracts coming within these regulations and completed during the next three succeeding income-taxable years.

Credit for such a net loss or deficiency in profit may be claimed in the contracting party's annual report of profit filed with the collector of internal revenue (see section 26.16 of these regulations), but it shall be supported by separate schedules for each contract or subcontract involved showing total contract prices, costs of performance and pertinent facts relative thereto, together with a summarized computation of the net loss or deficiency in profit. The net loss or deficiency in profit claimed is subject to verification and adjustment. As to preservation of books and records, see § 26.14 of these regulations.

Net loss or deficiency in profit sustained on contracts and subcontracts completed within one income-taxable year may not be considered in computing net loss or deficiency in profit sustained on contracts and subcontracts completed within another income-taxable year.

The provisions of this section may be illustrated by the following examples:

*Example (1).* On July 1, 1940, the A Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into the following contracts (none of which was

on a cost-plus-a-fixed-fee basis) coming within these regulations:

(1) A contract for the construction of a naval vessel at a contract price of $100,000, which was completed in 1940 at a cost of $170,000.

(2) A contract for the construction of naval aircraft at a contract price of $200,000, which was completed in 1940 at a cost of $190,000.

(3) A contract for the construction of Army aircraft at a contract price of $300,000, which was completed in 1940 at a cost of $250,000.

(4) A contract for the construction of naval aircraft at a contract price of $500,000, which was completed in 1941 at a cost of $450,000.

On contract No. 1 the net loss was $70,000 ($170,000 minus $100,000) and, accordingly, there was no excess of the net profit over the allowable profit.

On contracts Nos. 2 and 3 the total of the contract prices was $500,000 and the total cost was $440,000, resulting in a net profit of $60,000. The allowable profit on such contracts was $38,280 (8.7 percent of $440,000), which amount is less than $40,000 (8 percent of $500,000). On such contracts the excess of the net profit ($60,000) over the allowable profit ($38,280) was $21,720, and there was no deficiency in profit because the allowable profit did not exceed the net profit.

The amount of allowable credit is $48,280, computed as follows:

| | | |
|---|---|---|
| Net loss on naval vessel contract (No. 1) | | $70,000 |
| Less: Excess of net profit over allowable profit on aircraft contracts (Nos. 2 and 3) | | 21,720 |
| | | 48,280 |
| Deficiency in profit and net loss on aircraft contracts (Nos. 2 and 3) | None | |
| Less: Excess of net profit over allowable profit on naval vessel contract (No. 1) | None | None |
| Amount of allowable credit from year 1940 | | 48,280 |

On the contract for naval aircraft completed in 1941 (No. 4), there was a net profit of $50,000 ($500,000 minus $450,000). The allowable profit on such contract was $39,150 (8.7 percent of $450,000), which amount is less than $40,000 (8 percent of $500,000). Accordingly, the excess of the net profit over the allowable profit was $10,850. Against this amount the credit of $48,280 from 1940 may be taken, with the result that there is no excess profit for the year 1941. The remainder of the credit of $48,280 may not be used in subsequent years because none of the credit was attributable to contracts or subcontracts for the construction or manufacture of Army or Navy aircraft.

*Example* (2). On July 1, 1940, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into the following contracts (none of which was on a cost-plus-a-fixed-fee basis) coming within these regulations:

(1) A contract for the construction of a naval vessel at a contract price of $100,000, which was completed in 1940 at a cost of $120,000.

(2) A contract for the construction of Navy aircraft at a contract price of $200,000, which was completed in 1940 at a cost of $188,000.

(3) A contract for the construction of Army aircraft at a contract price of $300,000, which was completed in 1941 at a cost of $275,000.

(4) A contract for the construction of a naval vessel at a contract price of $400,000, which was completed in 1942 at a cost of $360,000.

On contract No. 1 the net loss was $20,000 ($120,000 minus $100,000) and, accordingly, there was no excess of the net profit over the allowable profit.

On contract No. 2 the net profit was $12,000 ($200,000 minus $188,000) and the allowable profit was $16,000 (8 percent of $200,000, which amount is less than $16,356 (8.7 percent of $188,000). Accordingly, on such contract there was a deficiency in profit of $4,000 ($16,000 minus $12,000). There was no excess of the net profit over the allowable profit, the latter being larger in amount.

The amount of allowable credit is $24,000, computed as follows:

| | | |
|---|---|---|
| Net loss on naval vessel contract (No. 1) | | $20,000 |
| Less: Excess of net profit over allowable profit on aircraft contract (No. 2) | | None |
| | | 20,000 |
| Deficiency in profit on aircraft contract (No. 2) | $4,000 | |
| Net loss on aircraft contract (No. 2) | None | |
| | | 4,000 |
| Less: Excess of net profit over allowable profit on naval vessel contract (No. 1) | None | 4,000 |
| Amount of allowable credit from year 1940 | | 24,000 |

On the contract for Army aircraft completed in 1941 (No. 3), there was a net profit of $25,000 ($300,000 minus $275,000). The allowable profit on such contract was $23,925 (8.7 percent of $275,000), which amount is less than $24,000 (8 percent of $300,000). Accordingly, the excess of the net profit over the allowable profit was $1,075. Against this amount the credit of $24,000 from 1940 may be taken, with the result that there is no excess profit for the year 1941. After applying such credit there is an unused remainder of the credit amounting to $22,925 ($24,000 minus $1,075).

On the Navy vessel contract completed in 1942 (No. 4) there was a net profit of $40,000 ($400,000 minus $360,000). The allowable profit on such contract was $31,320 (8.7 percent of $360,000), which amount is less than $32,000 (8 percent of $400,000). Accordingly, the excess of the net profit over the allowable profit is $8,680. Against this amount there may be taken as a credit such part of the unused remainder of the allowable credit from 1940 ($22,925) as is attributable to the contract for Navy aircraft (No. 2). Of the original credit of $24,000 from 1940, only $4,000 was attributable to contract No. 2, and hence $4,000 is the only part of the unused remainder ($22,925) which may be taken as a credit against the excess profit on contract No. 4.*

§ 26.11 *Credit for Federal income taxes.* For the purpose of computing the amount of excess profit to be paid to the United States, a credit is allowable against the excess profit for the amount of Federal income taxes paid or remaining to be paid on the amount of such excess profit. The "Federal income taxes" in respect of which this credit is allowable include the income taxes imposed by chapter 1 and subchapter A of chapter 2 of the Internal Revenue Code, as amended, and the excess-profits taxes imposed by subchapter B of chapter 2 of the Internal Revenue Code, as amended. This credit is allowable for these taxes only to the extent that it is affirmatively shown that they have been finally determined and paid or remain to be paid and that they were imposed upon the excess profit against which the credit is to be made. In case such a credit has been allowed and the amount of Federal income taxes imposed upon the excess profit is redetermined, the credit previously allowed shall be adjusted accordingly.*

§ 26.12. *Failure of contractor to require agreement by subcontractor.* Every contract or subcontract coming within the scope of the Act and these regulations is required by the Act and the Act of March 27, 1934, as amended, to contain, among other things, an agreement by the contracting party to make no subcontract unless the subcontractor agrees—

(a) To make a report, as described in the Act of March 27, 1934, as amended, under oath to the Secretary of the Department concerned upon the completion of the subcontract;

(b) To pay into the Treasury excess profit, as determined by the Treasury Department, in the manner and amounts specified in the Act;

(c) To make no subdivision of the subcontract for the same article or articles for the purpose of evading the provisions of the Act and the Act of March 27, 1934, as amended;

(d) That the manufacturing spaces and books of its own plant, affiliates, and subdivisions shall at all times be subject to inspection and audit as provided in the Act of March 27, 1934, as amended.

If a contracting party enters into a subcontract with a subcontractor who fails to make such agreement, such contracting party shall, in addition to its

liability for excess profit determined on contracts or subcontracts performed by it, be liable for any excess profit determined to be due the United States on the subcontract entered into with such subcontractor. In such event, however, the excess profit to be paid to the United States in respect of the subcontract entered into with such subcontractor shall be determined separately from any contract or subcontracts performed by the contracting party entering into the subcontract with such subcontractor.*

§ 26.13 *Evasion of excess profit.* The Act of March 27, 1934, as amended, provides that the contracting party shall agree to make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading its provisions. If any such subdivision or subcontract is made for the purpose of evading the provisions of the Act or the Act of March 27, 1934, as amended, it shall constitute a violation of the agreement, and the cost of completing a contract or subcontract by a contracting party which violates such agreement shall be determined in a manner necessary clearly to reflect the true excess profit of such contracting party.*

§ 26.14 *Books of account and records.* It is recognized that no uniform method of accounting can be prescribed for all contracting parties subject to the provisions of the Act and the Act of March 27, 1934, as amended. Each contracting party is required by law to make a report of its true profits and excess profit. Such party must, therefore, maintain such accounting records as will enable it to do so. See § 26.9 of these regulations. Among the essentials are the following:

(1) The profit or loss upon a particular contract or subcontract shall be accounted for and fully explained in the books of account separately on each contract or subcontract.

(2) Any cost accounting methods, however standard they may be and regardless of long continued practice, shall be controlled by, and be in accord with, the objectives and purposes of the Act and the Act of March 27, 1934, as amended, and of any regulations prescribed thereunder.

(3) The accounts shall clearly disclose the nature and amount of the different items of cost of performing a contract or subcontract.

In cases where it has been the custom in the past to use so-called "normal" rates of overhead expense or administrative expenses, or "standard" or "normal" prices of material or labor charges, no objection will be made to the use temporarily during the period of performing the contract or subcontract, if the method of accounting employed is such as clearly to reflect, in the final determination upon the books of account, the actual profit derived from the performance of the contract or subcontract and if the necessary adjusting entries are entered upon the books and they explain in full detail the revisions necessary to accord with the facts. As to the elements of cost, see § 26.9 of these regulations.

All books, records, and original evidences of costs (including, among other things, production orders, bills or schedules of materials, purchase requisitions, purchase orders, vouchers, requisitions for materials, standing expense orders, inventories, labor time cards, payrolls, cost distribution sheets) pertinent to the determination of the true profit, excess profit, deficiency in profit or net loss from the performance of a contract or subcontract shall be kept at all times available for inspection by internal-revenue officers, and shall be carefully preserved and retained so long as the contents thereof may become material in the administration of the Act and the Act of March 27, 1934, as amended. This provision is not confined to books, records, and original evidences pertaining to items which may be considered to be a part of the cost of performing a contract or subcontract. It is applicable to all books, records, and original evidences of costs of each plant, branch or department involved in the performance of a contract or subcontract or in the allocation or distribution of costs to the contract or subcontract.*

§ 26.15 *Report to Secretary of Department concerned.* Upon the completion of a contract or subcontract coming within the scope of the Act and these regulations, the contracting party is required to make a report, under oath, to the Secretary of the Department concerned. As to the date of completion of a contract or subcontract, see § 26.5 of these regulations. Such report shall be in the form prescribed by the Secretary of the Department concerned and shall state the total contract price, the cost of performing the contract, the net income from such contract, and the per centum such income bears to the contract price and the cost of performing the contract. The contracting party shall also include as a part of such report a statement showing—

(1) the manner in which the indirect costs were determined and allocated to the cost of performing the contract or subcontract (see § 26.9 of these regulations);

(2) the name and address of every subcontractor with whom a subcontract was made, the object of such subcontract, the date when completed and the amount thereof; and

(3) the name and address of each affiliate or other organization, trade or business owned or controlled directly or indirectly by the same interests as those who so own or control the contracting party, together with a statement showing in detail all transactions which were made with such affiliate or other organization, trade or business and are pertinent to the determination of the excess profit.

A copy of the report required to be made to the Secretary of the Department concerned is required to be transmitted by the contracting party to the Secretary of the Treasury. Such copy shall not be transmitted directly to the Secretary of the Treasury but shall be filed as a part of the annual report. See § 26.16 of these regulations.*

§ 26.16 *Annual reports for income-taxable years*—(a) *General requirements.* Every contracting party completing a contract or subcontract within the scope of these regulations shall file with the collector of internal revenue for the collection district in which the contracting party's Federal income tax returns are required to be filed an annual report on the prescribed form of the profit and excess profit on all such contracts and subcontracts completed within the particular income-taxable year. There shall be included as a part of such report a statement, preferably in columnar form, showing separately for each such contract or subcontract completed by the contracting party within the income-taxable year the total contract price, the cost of performing the contract or subcontract and the resulting profit or loss on each contract or subcontract together with a summary statement showing in detail the computation of the net profit or net loss upon all contracts and subcontracts completed within the income-taxable year and the amount of the excess profit, if any, for the income-taxable year covered by the report. A copy of the report made to the Secretary of the Department concerned (see § 26.15 of these regulations) with respect to each contract or subcontract covered in the annual report, shall be filed as a part of such annual report. In case the income-taxable year of the contracting party is a period of less than twelve months (see § 26.1 of these regulations), the report required by this section shall be made for such period and not for a full year.

(b) *Time for filing annual reports.* Annual reports of contracts and subcontracts coming within the scope of the Act and these regulations completed by a contracting party within an income-taxable year must be filed on or before the 15th day of the ninth month following the close of the contracting party's income-taxable year. It is important that the contracting party render on or before the due date an annual report as nearly complete and final as it is possible for the contracting party to prepare. An extension of time granted the contracting party for filing its Federal income tax return does not serve to extend the time for filing the annual report required by this section. Authority consistent with authorizations for granting extensions of time for filing Federal income tax returns is hereby delegated to the various collectors of

internal revenue for granting extensions of time for filing the reports required by this section. Application for extensions of time for filing such reports should be addressed to the collector of internal revenue for the district in which the contracting party files its Federal income tax returns and must contain a full recital of the causes for the delay.*

§ 26.17 *Payment of excess profit liability.* The amount of the excess profit liability to be paid to the United States shall be paid on or before the due date for filing the report with the collector of internal revenue. See § 26.16 of these regulations. At the option of the contracting party, the amount of the excess profit liability may be paid in four equal installments instead of in a single payment, in which case the first installment is to be paid on or before the date prescribed for the payment of the excess profit as a single payment, the second installment on or before the 15th day of the third month, the third installment on or before the 15th day of the sixth month, and the fourth installment on or before the 15th day of the ninth month, after such date.*

§ 26.18 *Liability of surety.* The surety under contracts entered into with the Secretary of the Department concerned for the construction or manufacture of any complete naval vessel or Army or Navy aircraft, or any portion thereof, shall not be liable for payment of excess profit due the United States in respect of such contracts.*

§ 26.19 *Determination of liability for excess profit, interest and penalties; assessment, collection, payment, refunds.* The duty of determining the correct amount of excess profit liability on contracts and subcontracts coming within the scope of the Act and these regulations is upon the Commissioner of Internal Revenue. Under section 3 (b) of the Act of March 27, 1934, as last amended, all provisions of law (including the provisions of law relating to interest, penalties and refunds) applicable with respect to the taxes imposed by Title I of the Revenue Act of 1934, and not inconsistent with section 3 of the Act of March 27, 1934, as last amended, are applicable with respect to the assessment, collection, or payment of excess profits on contracts and subcontracts coming within the scope of the Act and these regulations and to refunds of overpayments of profits into the Treasury under the Act. Claims by a contracting party for the refund of an amount of excess profit, interest, penalties, and additions to such excess profit shall conform to the general requirements prescribed with respect to claims for refund of overpayments of taxes imposed by Title I of the Revenue Act of 1934 and, if filed on account of any additional costs incurred pursuant to guarantee provisions in a contract, shall be supplemented by a statement under oath showing the amount and nature of such costs and all facts pertinent thereto.

Administrative procedure for the determination, assessment and collection of excess profit liability under the Act and these regulations and the examination of reports and claims in connection therewith will be prescribed from time to time by the Commissioner of Internal Revenue.*

§ 26.20 *Applicability of prior regulations.* The regulations prescribed in Treasury Decision 4906 (§§ 17.0 to 17.19, inclusive, Title 26, Code of Federal Regulations, 1939 Sup.) and Treasury Decision 4909 (§§ 16.0 to 16.18, inclusive, Title 26, Code of Federal Regulations, 1939 Sup.) shall not apply to contracts entered into after June 28, 1940, and before July 1, 1942, nor to subcontracts made with respect to such contracts. To this extent such regulations are hereby superseded.*

[SEAL] TIMOTHY C. MOONEY,
*Acting Commissioner of Internal Revenue.*

Approved, July 29, 1940.
JOHN L. SULLIVAN,
*Acting Secretary of the Treasury.*

Approved, August 2, 1940.
HENRY L. STIMSON,
*Secretary of War.*

Approved, August 6, 1940.
FRANK KNOX,
*Secretary of the Navy.*

[F. R. Doc. 40-3286; Filed, August 7, 1940; 3:36 p. m.]

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## TITLE 49—TRANSPORTATION AND RAILROADS

### CHAPTER I—INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-2]

ORDER IN THE MATTER OF MAXIMUM HOURS OF SERVICE OF MOTOR CARRIER EMPLOYEES

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 30th day of July, A. D. 1940.

*It appearing,* That by reports and orders entered December 29, 1937, July 12, 1938, and January 27, 1939, in the above-entitled proceeding, 3 M.C.C. 665, 6 M.C.C. 557, and 11 M.C.C. 203, hours of service regulations were prescribed applicable to common and contract carriers by motor vehicle engaged in the transportation of passengers and property in interstate or foreign commerce;

*And it further appearing,* That the American Transit Association on May 29, 1940, filed a petition requesting that Rule 5 (a) of said regulations be amended insofar as it applies to carriers engaged in the transportation of passengers, and good cause therefor appearing:

*It is ordered,* That the said proceeding be, and it is hereby, reopened for reconsideration on the record as made insofar as it concerns Rule 5 (a) of said regulations.

*And it further appearing,* That reconsideration of Rule 5 (a) of said regulations has been had, and the Commission on the date hereof has made and filed a report herein, which report and the reports and orders of December 29, 1937, July 12, 1938, and January 27, 1939, are hereby made a part hereof:

*It is further ordered,* That Rule 5 (a) of said hours of service regulations be and it is hereby amended by eliminating all that part of the rule beginning with the words "provided, however," and substituting in lieu thereof the following:

*Provided, however,* That the foregoing provisions of this rule shall not apply to any driver engaged in the transportation of property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities; *And provided further, however,* That the foregoing provisions of this rule shall not apply to any driver engaged in the transportation of passengers in interstate or foreign commerce while on a regular schedule over a regular route, mainly in urban and suburban areas, and when such regular route is not longer than 35 miles from the garage or terminal to the point or place where the motor vehicle starts on its return trip; *Provided further, however,* That the second proviso hereof shall apply only to drivers employed by carriers who maintain records which show the total number of hours of driving per day, the total number of hours on duty per day, and the total number of hours on duty per week of each such driver.

*And it is further ordered,* That this order shall become effective August 15, 1940.

By the Commission.

[SEAL] W. P. BARTEL,
*Secretary.*

[F. R. Doc. 40-3288; Filed, August 8, 1940; 10:29 a. m.]

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[Ex Parte No. MC-13]

REGULATIONS GOVERNING THE TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES BY MOTOR VEHICLE REVISED

*Decided August 6, 1940*

On further consideration prior reports and orders, 22 M.C.C. 477, (decided June 10, 1940) modified to make certain additions to the container requirements of regulations prescribed. Appearances as shown in the prior report.

SECOND SUPPLEMENTAL REPORT AND ORDER OF THE COMMISSION ON FURTHER CONSIDERATION

In the prior reports and orders in these proceedings, 22 M.C.C. 477, (decided June 10, 1940) we prescribed certain regulations entitled "Motor Carrier

Safety Regulations, Revised, Part 7,[1] Transportation of Explosives and Other Dangerous Articles," to be effective June 15, 1940, governing the transportation of such commodities by common and contract carriers by motor vehicle in interstate or foreign commerce.

Since our last report and order in this proceeding we have, on June 12, 1940, in No. 3666, prescribed certain new and amended regulations concerning containers[2] which may be used in the transportation of certain commodities by rail or by water carriers. Pertinent parts of these new and amended regulations should now, in the interest of consistency, be incorporated and made a part of the regulations prescribed in this proceeding governing the transportation of explosives or other dangerous articles by common or contract carriers by motor vehicle.

Accordingly, the proceeding is hereby reopened on our own motion for further consideration, and we find that our orders of April 1, 1940 and June 10, 1940, in these proceedings should be, and they are hereby, modified, amended, and supplemented by substituting the tabulations hereinafter set forth for those of corresponding item numbers in the regulations heretofore prescribed. For clarity the supplemented items are reproduced in their entirety, and the supplemental or amended portions thereof are in italics.

Item 128. "Ethylene oxide". Column 2: If in inside packages of not over 16 ounces capacity each. Column 3: Fiber boxes; wooden boxes; cylinders, except acetylene cylinders; metal barrels or drums; *tank motor vehicles.* Column 4: Same as Items Nos. 56 to 125.

Item 214. "Acid, sludge". Column 2: No exemptions. Column 3: Tank motor vehicles; *carboys, boxed (not permitted if containing hydrofluoric acid).* Column 4: *White label.*

Item 215. "Acid, spent mixed". Column 2: No exemptions. Column 3: Tank motor vehicles; *carboys, boxed (not permitted if containing hydrofluoric acid).* Column 4: *White label.*

Item 216. "Acid, spent sulphuric". Column 2: No exemptions. Column 3: Tank motor vehicles; *carboys, boxed (not permitted if containing hydrofluoric acid).* Column 4: *White label.*

Item 295. "Arsenical compounds", "dust" or "mixtures", n. o. s. and the following: Item 296. "Arsenate of lead"; Item 297. "Calcium arsenate"; Item 298. "Paris green". Column 2: For freight shipments only; outside wooden or fiber boxes, or wooden barrels or kegs, with inside containers, total 5 to 100 lb. net, according to containers used (No I. C. C. specification marking). Column 3: Fiber boxes or drums; metal barrels or drums; *paper bags (without inside paper bags, TL lots only; with inside paper bags, TL or LTL lots permissible);* wooden barrels, boxes, kegs, or kits; tank motor vehicles; and also the following for arsenic and arsenic trioxide, metal-strapped wooden boxes and wooden barrels (No I. C. C. specification marking) for import shipments only. Column 4: Poison label.

Item 307. "Aniline oil". Column 2: For freight shipments only. Outside wooden boxes or barrels or fiber boxes, with inside containers (No I.C.C. specification marking). Column 3: Wooden barrels, boxes, or kegs; tank motor vehicles; metal barrels or drums. Column 4: Poison label. *Multiple trip containers must bear a returnable package notice.*

The foregoing changes tend to liberalize the regulations previously prescribed by authorizing the acceptance for transportation, or the transportation of certain commodities in containers of a type not heretofore acceptable and accordingly may be made effective as of this date without prejudice to anyone affected thereby and it is so ordered.

By the Commission.

[SEAL] W. P. BARTEL,
*Secretary.*

Commissioners Miller and Patterson not participating.

[F. R. Doc. 40-3289; Filed, August 8, 1940; 10:29 a. m.]

[1] 5 F.R. 1481.
[2] 5 F.R. 2213.

## *Notices*

### DEPARTMENT OF LABOR.

#### Wage and Hour Division.

[Supplementary Determination No. 1]

EXEMPTION OF QUARRYING OF CRUSHED STONE FROM SURFACE OR OPEN CUTS FROM THE MAXIMUM HOURS PROVISIONS

Whereas, the Administrator determined[1] after a public hearing held before Harold Stein, Presiding Officer, on June 19, 1939 that:

1. There is a branch of the crushed stone industry wherein the plants normally shut down for about six months each year, except for an insubstantial amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder and, in general, more northerly parts of the United States; and

3. The plants in the northern branch cease operation annually at a regularly recurring season of the year, except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling and processing in the form in which they must be excavated, handled, and processed, i. e., as unfrozen ledges and banks of blasted rock, because of climatic factors; and

4. The northern branch of the crushed stone industry is an industry of a seasonal nature within the meaning of section 7 (b) (3) of the Act and Part 526 of regulations issued thereunder; and

Whereas, paragraph (8) of the above Determination provides that it shall be without prejudice to a supplementary determination enlarging the scope of the northern branch by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner and for the same reasons as the plants in the northern branch described in paragraphs 1 and 3 above; and

Whereas, the Ohio Crushed Stone Association filed an application with the Wage and Hour Division, United States Department of Labor, on behalf of The Gottron Bros. of Fremont, Ohio, pursuant to paragraph (8) of the above cited original determination in the matter of the crushed stone industry, to include the excavating, hauling, and processing of crushed stone by The Gottron Bros. at Fremont, Sandusky County, Ohio; and

Whereas, it appears from the application filed by the Ohio Crushed Stone Association on behalf of The Gottron Bros. of Fremont, Ohio, that the crushed stone plant of the aforesaid company in Sandusky County, Ohio, operates in the same manner and for the same reason as the plants in the northern branch described in paragraphs 1 and 3 of the original determination.

Now, therefore, upon consideration of the facts stated in the said application for supplementary determination, the Administrator hereby determines, pursuant to § 526.5 (b) (ii), as amended, of the regulations, that a *prima facie* case has been shown for enlarging the scope of th e northern branch of the crushed stone industry, in accordance with paragraph (8) of the original determination and pursuant to section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the regulations issued thereunder to include the crushed stone plant of The Gottron Bros., in Sandusky County, Ohio.

In accordance with the procedure established by § 526.5 (b) (ii), as amended, of the regulations, the Administrator for fifteen days following the publication of this determination will receive objection to the granting of the exemption and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the *prima facie* case shown upon the application.

The application may be examined in Room 5220, U. S. Department of Labor, Washington, D. C.

Signed at Washington, D. C., this 5th day of August 1940.

PHILIP B. FLEMING,
*Administrator.*

[F. R. Doc. 40-3285; Filed, August 7, 1940; 2:56 p. m.]

[1] 5 F.R. 2184.

NOTICE OF ISSUANCE OF A SPECIAL CERTIFICATE FOR THE EMPLOYMENT OF LEARNERS

Notice is hereby given that a Special Certificate authorizing the employment of learners at hourly wages lower than the minimum rate applicable under Section 6 of the Fair Labor Standards Act

of 1938 is issued pursuant to Section 14 of the said Act and § 522.5 (b) of Regulations Part 522 (4 F.R. 2088), as amended (4 F.R. 4226), to the employer listed below effective August 9, 1940). This Certificate is issued upon his representations that experienced workers for the learner occupations are not available and that he is actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment. This Certificate may be canceled in the manner provided for in § 522.5 (b) of the Regulations and as indicated on the Certificate. Any person aggrieved by the issuance of this Certificate may seek a review of the action taken in accordance with the provisions of § 522.5 (b). The employment of learners under this Certificate is limited to the terms and conditions as designated opposite the employer's name.

NAME AND ADDRESS OF FIRM, PRODUCT, NUMBER OF LEARNERS, LEARNING PERIOD, LEARNER WAGE, LEARNER OCCUPATIONS, EXPIRATION DATE

Marathon Rubber Products Company, Fifth and Sherman Streets, Wausau, Wisconsin; Rubberized Cloth and Garments; 50 learners; 8 weeks for any one learner; 75% of the applicable hourly minimum wage; Stitching and Cementing; October 24, 1940.

Signed at Washington, D. C., this 8th day of August 1940.

MERLE D. VINCENT,
*Authorized Representative of the Administrator.*

[F. R. Doc. 40-3300; Filed, August 8, 1940; 11:58 a. m.]

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NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS

Notice is hereby given that Special Certificates authorizing the employment of learners at hourly wages lower than the minimum wage rate applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued under Section 14 of the said Act and § 522.5 of Regulations Part 522, as amended, to the employers listed below effective August 9, 1940. These Certificates may be canceled in the manner provided for in the Regulations and as indicated in the Certificate. Any person aggrieved by the issuance of any of these Certificates may seek a review of the action taken in accordance with the provisions of §§ 522.13 or 522.5 (b), whichever is applicable of the aforementioned Regulations.

The employment of learners under these Certificates is limited to the occupations, learning periods, and minimum wage rates specified in the Determination or Order for the Industry designated below opposite the employer's name and published in the FEDERAL REGISTER as here stated:

Regulations, Part 522, May 23, 1939 (4 F.R. 2088), and as amended October 12, 1939 (4 F.R. 4226).

Hosiery Order, August 22, 1939 (4 F.R. 3711).

Apparel Order, October 12, 1939 (4 F.R. 4225).

Knitted Wear Order, October 24, 1939 (4 F.R. 4351).

Textile Order, November 8, 1939 (4 F.R. 4531), as amended, April 27, 1940 (5 F.R. 1586).

Glove Order, February 20, 1940 (5 F.R. 714).

NAME AND ADDRESS OF FIRM, INDUSTRY, PRODUCT, NUMBER OF LEARNERS, AND EXPIRATION DATE

Aaron Dress Co., Inc., 4 Norwich Avenue, Colchester, Connecticut; Apparel; Dresses; 5 learners (75% of the applicable hourly minimum wage); October 24, 1940.

Clever Maid Uniform Company, 500 South Peoria Street, Chicago, Illinois; Apparel; Service Uniforms; 5 learners (75% of the applicable hourly minimum wage); October 24, 1940.

Grossman Mfg. Company, 521 South Main Street, Brewer, Maine; Apparel; Mackinaws & Jackets; 3 learners (75% of the applicable hourly minimum wage); October 24, 1940.

C. B. Cones & Son Manufacturing Company, 18–24 North Senate Avenue, Indianapolis, Indiana; Apparel; Work Shirts, Pants, and Overalls; 5 percent (75% of the applicable hourly minimum wage); October 24, 1940.

Klein Dress Company, 210 North Valley Avenue, Olyphant, Pennsylvania; Apparel; Dresses; 10 learners (75% of the applicable hourly minimum wage); October 24, 1940.

N & W Overall Company, Inc., 1417 Kemper Street, Lynchburg, Virginia; Apparel; Cotton Overalls, Shirts, and Pants; 5 percent (75% of the applicable hourly minimum wage); October 24, 1940.

Universal Coat Company, 105 Maplewood Avenue, Gloucester, Massachusetts; Apparel; Sportswear; 12 learners (75% of the applicable hourly minimum wage); October 24, 1940.

E-Z Mills, Inc., 401 Gage Street, Bennington, Vermont; Knitted Wear; Underwear; 5 percent; October 24, 1940.

The Rhode Island Mills Company, 68 Hadwin Street, Central Falls, Rhode Island; Textile; Braided Mats; 10 learners; October 24, 1940.

The Rhode Island Mills Company, 68 Hadwin Street, Central Falls, Rhode Island; Textile (Tufted Bedspread Branch); Tufted and Woven Chenille Mats; 3 learners; October 24, 1940.

Sterling Silk Glove Company, 25 Messinger Street, Bangor, Pennsylvania; Gloves; Knit Fabric Gloves; 5 percent; October 24, 1940.

Sterling Silk Glove Company, 25 Messinger Street, Bangor, Pennsylvania; Gloves; Knit Fabric Gloves; 150 learners; October 24, 1940.

Signed at Washington, D. C., this 8th day of August 1940.

MERLE D. VINCENT,
*Authorized Representative of the Administrator.*

[F. R. Doc. 40-3299; Filed, August 8, 1940; 11:58 a. m.]

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## FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5176]

IN RE APPLICATION OF PITTSBURGH RADIO SUPPLY HOUSE (WHJB)

*Dated March 11, 1938, for construction permit; class of service, broadcast; class of station, broadcast; location, Greensburg, Pennsylvania; operating assignment specified: Frequency, 620 kc., day—night; power, 1 kw.; hours of operation, unlimited.*

[File No. B2-P-2091]

NOTICE OF HEARING

Pursuant to Commission's Order of July 16, 1940, you are hereby notified that the above described application has been designated for further hearing for the following reasons:

1. To determine the nature, extent, and effect of the electrical interference which would result should Station WHJB operate as proposed simultaneously with Stations WROL and WTMJ.

2. To determine the extent to which Station WHJB, operating as proposed, would render service in the areas now being served by Stations WJAS and KQV.

3. To determine whether the proposed operation of WHJB in the same general area where the applicant is also the licensee of and operates Station WJAS and is under the same control as the corporation which is the licensee of and operates Station KQV would serve public interest, convenience, or necessity.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of Section 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commis-

sion's Rules of Practice and Procedure. The applicant's address is as follows:

Pittsburgh Radio Supply House
411 Seventh Avenue,
Pittsburgh, Pennsylvania.

Dated at Washington, D. C., August 7, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,
*Secretary.*

[F. R. Doc. 40-3287; Filed, August 8, 1940; 10:16 a. m.]

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[Docket No. 5894]

APPLICATION OF R.C.A. COMMUNICATIONS, INC., FOR AUTHORITY UNDER SECTION 214 (a) OF THE ACT TO LEASE AND OPERATE A TWO-WAY TELEGRAPH PRINTER CIRCUIT BETWEEN BALTIMORE AND BELCAMP, MARYLAND, FOR TRANSOCEANIC TELEGRAPH TRAFFIC

[File No. T-C-137]

NOTICE OF HEARING

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing to be held at the offices of the Commission, Washington, D. C., on September 16, 1940, at 10:00 o'clock A. M., E. S. T., for the following reasons:

1. To determine the nature and character of the service to be rendered over the proposed telegraph circuit, including the classifications of messages and charges applicable thereto.

2. To determine whether or not the granting of the application would result in any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services or give any undue or unreasonable preference or advantage to any particular person or class of persons or locality, or subject any particular person or class of persons or locality to any undue or unreasonable prejudice or disadvantage.

3. To determine the amount of telegraph traffic to be derived from the operation of the proposed circuit.

4. To determine whether or not the telegraph service now rendered to Belcamp, Maryland, is adequate and whether or not there is need for the proposed circuit.

5. To determine whether or not the interests, service or revenue of any other carrier subject to the Communications Act of 1934, as amended, may be adversely affected and, if so, the extent thereof, and whether or not the competitive result will impair the ability of any such other carrier to serve public convenience and necessity.

6. To determine whether or not the granting of the application would result in the unnecessary duplication of telegraph facilities.

7. To determine whether or not the present or future public convenience and necessity require or will require the granting of the application.

The following are notified of the time and place of this hearing:

The Western Union Telegraph Company.
Postal Telegraph-Cable Co.
Mackay Radio and Telegraph Company (Delaware).
Mackay Radio and Telegraph Company (California).
American Telephone and Telegraph Company.
Chesapeake and Potomac Telephone Company of Baltimore City.
Commercial Cable Company.
Commercial Pacific Cable Company.
All America Cables and Radio, Inc.
Globe Wireless, Ltd.
French Telegraph Cable Company.
Tropical Radio Telegraph Company.
Press Wireless, Inc.

Dated, August 7, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,
*Secretary.*

[F. R. Doc. 40-3293; Filed, August 8, 1940; 11:40 a. m.]

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## FEDERAL SECURITY AGENCY.

### Food and Drug Administration.

[Docket No. F.D.C.-21]

POSTPONEMENT OF THE OPENING OF THE PUBLIC HEARINGS TO BE HELD FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: (A) FLOUR, WHITE FLOUR, WHEAT FLOUR, PLAIN FLOUR; (B) DURUM FLOUR; (C) WHOLE WHEAT FLOUR, GRAHAM FLOUR, ENTIRE WHEAT FLOUR; (D) CRACKED WHEAT; (E) CRUSHED WHEAT; (F) WHOLE DURUM WHEAT FLOUR; (G) SELF-RISING FLOUR; SELF-RISING WHITE FLOUR, SELF-RISING WHEAT FLOUR; (H) PHOSPHATED FLOUR, PHOSPHATED WHITE FLOUR, PHOSPHATED WHEAT FLOUR; (I) FARINA; AND (J) SEMOLINA

The public hearings announced for the purpose of receiving evidence upon the basis of which regulations may be promulgated fixing and establishing a definition and standard of identity for flour and the related food products specified in the caption hereof, scheduled to commence on September 4, 1940 (5 FEDERAL REGISTER 2746-2749), are postponed hereby so that the hearings will be held commencing at 10 o'clock in the morning of September 9, 1940, in Rooms A, B, and C, Departmental Auditorium, Constitution Avenue, between 12th and 14th Streets NW., Washington, D. C.

The notice of hearings published in the FEDERAL REGISTER for August 3, 1940 (5 FEDERAL REGISTER 2746-2749), is adopted hereby and made a part hereof for all purposes, except that the date for the opening of the hearings will be September 9, 1940, instead of September 4, 1940. No other change in the notice of public hearings is made by this notice of postponement.

Done at Washington, D. C., this 7th day of August 1940.

PAUL V. MCNUTT,
*Administrator.*

[F. R. Doc. 40-3304; Filed, August 8, 1940; 12:31 p. m.]

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## SECURITIES AND EXCHANGE COMMISSION.

[File No. 1-2286]

IN THE MATTER OF AUBURN AUTOMOBILE COMPANY COMMON STOCK, NO PAR VALUE

ORDER SETTING HEARING ON APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 7th day of August, A. D. 1940

The Chicago Stock Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the Common Stock, No Par Value, of Auburn Automobile Company; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

*It is ordered,* That the matter be set down for hearing at 10 A. M. on Friday, August 30, 1940, at the office of the Securities & Exchange Commission, 105 W. Adams Street, Chicago, Illinois, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

*It is further ordered,* That Henry Fitts, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
*Secretary.*

[F. R. Doc. 40-3292; Filed, August 8, 1940; 11:20 a. m.]

[File No. 70-117, 56-85]

IN THE MATTER OF RALPH H. BEATON, CENTRAL U. S. UTILITIES COMPANY

ORDER CONSOLIDATING PROCEEDINGS AND NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 6th day of August, A. D. 1940.

An application pursuant to the Public Utility Holding Company Act of 1935 having been duly filed with this Commission by the above named Ralph H. Beaton; and

This application involving the acquisition by Ralph H. Beaton, an affiliate of the Kokomo Gas & Fuel Company, of all the common capital stock of the Richmond Gas Company, a company formed for the purpose of acquiring and operating a gas manufacturing and distribution system in the City of Richmond, Indiana, and the applicant having designated section 9 (a) (2) and 10 of the Public Utility Holding Company Act as applicable to the proposed transaction; and

It appearing to the Commission that such application involves common questions of fact with the application filed by the above-named Central U. S. Utilities Company on which a hearing has been held on May 22, 1940, and May 24, 1940;

*It is ordered*, That the proceedings In the Matter of Ralph H. Beaton and the proceedings In the Matter of Central U. S. Utilities Company be consolidated.

*It is further ordered*, That a hearing in such consolidated proceeding under the applicable provisions of said Act and the rules of the Commission thereunder be held on August 20, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

*It is further ordered*, That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before August 17, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3294; Filed, August 8, 1940; 11:44 a. m.]

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[File No. 63-3]

IN THE MATTER OF SECURITIES CORPORATION GENERAL

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION UNDER PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANT

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 6th day of August, A. D. 1940.

Upon the request of the applicant, the Commission hereby consents to the withdrawal of the application abovenamed and to that effect.

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3295; Filed, August 8, 1940; 11:44 a. m.]

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[File No. 70-81]

IN THE MATTER OF CONSOLIDATED ELECTRIC AND GAS COMPANY, THE ISLANDS GAS AND ELECTRIC COMPANY, ATLANTIC GAS LIGHT COMPANY, MACON GAS COMPANY, MANILA GAS CORPORATION, PORTO RICO GAS & COKE COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION UNDER PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANTS

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 6th day of August, A. D. 1940.

Upon the request of the applicants, the Commission hereby consents to the withdrawal of the application abovenamed and to that effect.

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3296; Filed, August 8, 1940; 11:44 a. m.]

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[File No. 70-134]

IN THE MATTER OF MONONGAHELA WEST PENN PUBLIC SERVICE COMPANY

NOTICE REGARDING FILING SUBJECT TO RULE U-8

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 7th day of August, A. D. 1940.

Notice is hereby given that a declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named party; and

Notice is further given that any interested person may, not later than August 23, 1940 at 4:30 P. M., E. S. T., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration, as filed or as amended, may become effective or may be granted, as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C.

The declarant has requested that the declaration be permitted to become effective as promptly as possible after the date of filing.

All interested persons are referred to said declaration, which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

The declarant states that the proposed transaction contemplates a capital contribution of not more than $35,000 by the declarant to The West Maryland Power Company, a wholly owned subsidiary, which capital contribution will be added by the declarant to its investment in the capital stock of the subsidiary.

The proceeds of the capital contribution are to be used for construction of rural electric distribution lines within the service area of The West Maryland Power Company, in order to render service to certain proposed customers.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3297; Filed, August 8, 1940; 11:44 a. m.]

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[File No. 70-77]

IN THE MATTER OF SOUTHEASTERN ELECTRIC AND GAS COMPANY, SOUTHEASTERN INVESTING CORPORATION, LEXINGTON WATER POWER COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION FILED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 7th day of August, A. D. 1940.

The above named parties having filed with the Commission a request for the

withdrawal of the following described applications and declaration:

Applications by Southeastern Investing Corporation pursuant to Rule U-12F-1 and Rule U-12C-1 promulgated under the Public Utility Holding Company Act of 1935 seeking approval of the sale by it of Lexington Water Power Company 5½% Convertible Sinking Fund Debentures, due January 1, 1953 at a price of $87.898 per $100 of debentures plus accrued interest to the issuer in consideration of a return to applicant by Southeastern Electric and Gas Company, parent of Southeastern Investing Corporation of a corresponding amount of Southeastern Investing Corporation's 5% Convertible Obligations due March 1, 1963;

An application by Lexington Water Power Company pursuant to Rule U-12C-1 promulgated under the Act concerning the acquisition of the above described debentures;

A declaration by Southeastern Electric and Gas Company pursuant to Rule U-12C-1 promulgated under the Act concerning the following extensions of credit to Lexington Water Power Company; one, to extend credit to Lexington Water Power Company for the purchase price of the above-mentioned debentures (such credit to be in the form of an increase in the open account running from Lexington Water Power Company to Southeastern Electric and Gas Company), and second, to subordinate all indebtedness of Lexington Water Power Company running to Southeastern Electric and Gas Company to the prior payment in full of a promissory note proposed to be issued, on or before July 1, 1940 by Lexington Water Power Company to The Public National Bank and Trust Company in the face amount of $400,000;

The Commission consents to the withdrawal of such applications and declaration, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3298; Filed, August 8, 1940; 11:44 a. m.]

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[File No. 70-129]

IN THE MATTER OF CENTRAL U. S. UTILITIES COMPANY

NOTICE REGARDING FILING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 8th day of August, A. D. 1940.

Notice is hereby given that a declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named party;

Notice is further given that any interested person may, not later than August 24, 1940, at 1:00 P. M., E. S. T., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration, as amended, may become effective, as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington. D. C.

All interested persons are referred to said declaration which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

Central U. S. Utilities Company, a registered holding company, proposes to make a voluntary capital contribution, without consideration, to its subsidiary, Pennsylvania Electric Company, in the sum of $1,500,000 to be used by the recipient for additions, extensions and improvements of its plant facilities necessary for the conduct of its business. It is proposed that said $1,500,000 shall be recorded on the books of Pennsylvania Electric Company as an addition to capital surplus.

Declarant has indicated Rule U-12B-1 promulgated under Section 12 (b) of the Act as applicable to this proposed transaction.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3301; Filed, August 8, 1940; 12 m.]

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[File No. 70-130]

IN THE MATTER OF CENTRAL U. S. UTILITIES COMPANY

NOTICE REGARDING FILING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 8th day of August, A. D. 1940.

Notice is hereby given that a declaration has been filed with this commission pursuant to the Public Utility Holding Company Act of 1935 by the above-named party; and

Notice is further given that any interested person may, not later than August 24, 1940 at 1:00 P. M., E. S. T., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration, as amended, may become effective as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C.

All interested persons are referred to said declaration which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

Central U. S. Utilities Company, a registered holding company, proposes to donate to its wholly owned subsidiary, Union Gas & Electric Company, as a contribution to that company's capital $375,000 in cash, such cash to be used by Union Gas & Electric Company to retire all of its presently outstanding First Mortgage 5% Gold Bonds due September 1, 1940 in principal amount of $375,000.

The declarant proposes to record said $375,000 on its books as an increase in its investment account. It is also proposed to record the $375,000 on the books of Union Gas & Electric Company as an addition to capital surplus and that as soon as practicable, such sum is to be transferred from capital surplus to stated value for common stock so as to increase said stated value for common stock from $750,000 to $1,125,000.

Declarant has requested that the Commission accelerate the effective date of said declaration to a date not later than August 26, 1940. Rule U-12B-1 promulgated under Section 12 (b) of the Act has been designated by declarant as applicable to the proceedings.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-3302; Filed, August 8, 1940; 12 m.]

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[File No. 70-135]

IN THE MATTER OF COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY

NOTICE REGARDING FILING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 8th day of August, A. D. 1940.

Notice is hereby given that an application has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above-named party; and

Notice is further given that any interested person may, not later than August 23, 1940 at 4:30 P. M., E. S. T., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such application, as filed or as amended, may become effective or may be granted, as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C.

The applicant requests that the effective date of said application be advanced to a date on or before September 3, 1940.

All interested persons are referred to said application, which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

Applicant proposes to issue and sell publicly through underwriters $29,000,000 principal amount of its First Mortgage Bonds, 3¼%, Series due 1970, to be dated September 1, 1940, and to be due September 1, 1970 under an Indenture of Mortgage, and Deed of Trust dated September 1, 1940, to City Bank Farmers Trust Company, as Trustee.



The applicant states that the proceeds from the sale of such bonds will be applied as follows:

(a) To the redemption, on or about November 2, 1940 of $26,000,000 principal amount of the company's First Mortgage and Collateral Trust Bonds, 4% Series, due 1965, which are redeemable at 105% and accrued interest.

(b) To the redemption on or before December 1, 1940 of $1,836,000 principal amount of the company's First Mortgage and Collateral Trust Bonds, 3¼% Series, due 1968, which are redeemable at 104% and accrued interest.

(c) The remainder of such proceeds is initially to become part of the company's general corporate funds.

Applicant states that the names of the underwriters and the price at which said bonds will be offered to the public and the spread to the underwriters will be supplied by amendment.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
*Secretary.*

[F. R. Doc. 40-3303; Filed, August 8, 1940; 12 m.]